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LETTER DATED 27 MARCH 1995 FROM THE PERMANENT REPRESENTATIVE OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to transmit to you herewith a note entitled "Security Council resolution 731 (1992) and the latest developments in the Lockerbie question".

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Mohamed A. AZWAI
Permanent Representative

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Annex

SECURITY COUNCIL RESOLUTION 731 (1992) AND THE LATEST DEVELOPMENTS IN THE LOCKERBIE QUESTION

13 February 1995

1. Security Council resolution 731 (1992) was based on the indictments in connection with the bombing of Pan Am flight 103 that were handed down on 14 November 1991 by the Lord Advocate (attorney-general) of Scotland and by a grand jury at the United States District Court for the District of Columbia. The decision to indict was based on the information gathered by the two countries over a three-year period and, as a result, they brought charges against two Libyan nationals. The resolution in question was also based on French demands relating to the bombing of UTA flight 772, demands made by the United Kingdom and the United States and joint demands made by all three Governments after the indictments were handed down. (See documents S/23306, S/23307, S/23308, S/23309 and S/23317.) In connection with the Pan Am incident, the British and American governments declared (S/23308) that the Libyan Government must:

> "(a) Surrender for trial all those charged with the crime and accept responsibility for the actions of Libyan officials;
>
> "(b) Disclose all it knows of this crime, including the names of all those responsible, and allow full access to all witnesses, documents and other material evidence, including all the remaining timers;
>
> "(c) Pay appropriate compensation."

They then joined the French Government in making an additional demand, namely that Libya must "commit itself concretely and definitively to cease all forms of terrorist action and all assistance to terrorist groups" and that it "must promptly, by concrete actions, prove its renunciation of terrorism" (S/23309).

2. Under pressure from the three Governments, the Security Council then adopted its resolution 748 (1992), into which the question of terrorism on a wide scale had been forcibly injected. In violation of many of the provisions of the Charter of the United Nations, the Council thereby imposed an aerial, diplomatic and military embargo on Libya despite the fact that the matter at issue was in essence a legal dispute governed by the 1971 Montreal Convention for the Suppression of Unlawful Acts against Civil Aviation. The Council subsequently adopted its resolution 883 (1993) by which the sanctions were made more stringent.

These sanctions have done great harm to our people in all aspects of life, and the Libyan Arab Jamahiriya has submitted to the Security Council the following documents showing the damage inflicted and the obstacles imposed on the various sectors by the sanctions as well as the adverse impact they have had on neighbouring countries: S/23855, S/23915, S/23954, S/24004, S/24072,

S/24186, S/24334, S/24381, S/24427, S/24428, S/24448, S/24463, S/24530, S/24629, S/24961/Add.1, S/25559, S/25990, S/26139, S/26654 and S/1994/921.

3. Despite the extraordinary demands made by the British and American Governments and the fact that those demands were patently contrary to the provisions of international law and of the international human rights instruments, and in particular to article 14, paragraph 2, of the International Covenant on Civil and Political Rights, the Libyan Arab Jamahiriya nevertheless complied in full with Security Council resolution 731 (1992) and spared no effort to seek a possible solution in keeping with the provisions of the law. The initiatives taken by Libya can be summed up as follows:

(a) On receipt of the two indictments, it exercised its jurisdiction under the 1971 Montreal Convention and appointed an investigating magistrate. However, the United States and British Governments refused to cooperate with the Libyan authorities, with the result that measures to bring the accused to trial failed because of their intransigence. (See documents S/23416, S/23417, S/23441 and S/23574.)

(b) It proposed that the question should be referred to the International Court of Justice with a view to ascertaining whether the charges made against the Libyan suspects were well grounded, and it proposed that the two might be handed over to the office of the United Nations Development Programme in Tripoli for questioning. It further proposed that the Secretary-General of the United Nations should undertake to form a legal committee made up of judges of attested impartiality and fairness to inquire into the facts, ascertain whether the charges made against the two suspects were well founded and conduct a full investigation, stating that should it become evident to the Secretary-General that the charges were well founded, the Jamahiriya would not oppose the hand-over of the two suspects, under his personal supervision, to a third party, on the understanding that they should not again be handed over. (See document S/23672, annex I.)

(c) The Libyan Arab Jamahiriya approached the International Court of Justice unilaterally in order to present its viewpoint.

(d) The matter was referred to the Basic People's Congresses at their second session for 1992. They expressed the view that there could be no objection to an investigation and trial arranged through the Committee of Seven of the League of Arab States or through the United Nations before a just and fair tribunal to be agreed upon. On that basis, the Libyan Arab Jamahiriya declared that it was ready to begin negotiations with the countries concerned, under the auspices of the Secretary-General of the United Nations, on the conduct of the trial in a neutral country to which none of the parties to the dispute objected and where all the guarantees necessary to bringing the truth to light could be provided. (See documents S/23918, S/24209, S/24961 and S/26313.)

(e) The Libyan Arab Jamahiriya and the attorneys for the suspects submitted a number of questions to the Secretary-General of the United Nations for forwarding to the three countries concerned and to the members of the Security Council. (See documents S/26500 and S/26523.) Following receipt of answers to the questions, the Secretary-General was notified that the guarantees

provided by him were sufficient and acceptable and that the Libyan Arab Jamahiriya, as a State, not only had no objection to the suspects going to trial but was urging them to do so. However, the defence team for the two, made up of legal advisers of different nationalities and including Britons and Americans, was deeply concerned by the effect pre-trial publicity in the United States and Scotland might have in prejudicing prospective jurors, by the absence of the customary extradition procedures and by the refusal of the prosecuting authorities to disclose the evidence to be used in the trial. The defence was of the view that this refusal would greatly limit its ability to prepare its case in the proper manner. (See documents S/26500, S/26523 and S/26629.)

4. In parallel with the efforts and initiatives undertaken by the Libyan Arab Jamahiriya with a view to arriving at a solution in keeping with the provisions of international law, the Council of the League of Arab States adopted a resolution on 27 March 1994 in which it endorsed the proposal of the Secretary-General of the League that the two suspects should be tried by Scottish judges under Scots law at the seat of the International Court of Justice at The Hague and urged the Security Council to take account of this new and constructive proposal in seeking a peaceful settlement so as to prevent any escalation of the situation that might exacerbate tension in the region. (See document S/1994/373.)

5. The three Governments did not accord the endeavours and initiatives undertaken by the Jamahiriya and the League the attention they deserved. They turned a deaf ear to the views expressed by the Arab Maghreb Union, the League of Arab States, the Organization of African Unity, the Organization of the Islamic Conference and the Movement of Non-Aligned Countries, and they maintained their intransigent position of insisting on their unlawful demands and especially on the need for the suspects to appear before American and Scottish courts. Consequently, the Security Council was hurriedly pressed into taking action under Chapter VII of the Charter, instead of applying the provisions of Chapter VI, and into imposing harsh sanctions that are in no way appropriate to this dispute.

6. The three Governments have maintained their intransigent attitude despite the developments revealed in the news media, the debate held in the British House of Commons on 1 February 1995 and the statements made by the spokesman for the families of the British "Pan Am Victims". These developments have revealed serious flaws and shortcomings in the investigation of the true reasons for the crash of Pan Am flight 103, and they have highlighted the uncertainty surrounding a number of occurrences and the fact that many questions remain to be answered. The families of the British Pan Am victims have serious misgivings about the inquiries carried out by the British authorities and therefore about their outcome. These doubts are revealed in the petition presented to the European Parliament on 19 January 1995 by Dr. Jim Sawyer, spokesman for the victims' families, which states that the families have been pressing for a reopening of the investigation, that neither Prime Minister Thatcher nor her successor Major would agree to a meeting with them and that they think that the investigations carried out failed to uncover the truth.

The investigating authorities in both the United Kingdom and the United States base their indictments on an account to the effect that "On

21 December 1988 at Luqa Airport, [Malta, the two suspects] did place or cause to be placed on board an aircraft of Air Malta, flight KM-180 to Frankfurt ..., the suitcase or a similar suitcase ..., having tagged or caused such suitcase to be tagged so as to be carried by aircraft from Frankfurt ... via London, Heathrow Airport, to New York, John F. Kennedy Airport" (S/23307). However, a Federal Bureau of Investigation document mentioned by the newspaper The Independent in its issue for 30 January 1995 gives a completely different story according to which the suitcase was placed on board the aircraft in Frankfurt. The FBI document indicates that there is no documented proof that the suitcase was on board the Air Malta aircraft, and it also points to parties other than Libya as being behind the Pan Am bombing.

A recently disclosed United States Air Force Intelligence document tells another and more detailed story of who was behind the bombing of Pan Am flight 103, and an article in The Sunday Telegraph of 29 January 1995 refers to other parties that may be behind the bombing.

An article in the 5 February 1995 issue of the same newspaper reveals a discrepancy, in that the coroner issued death certificates for 59 decedents at Lockerbie while there were only 58 bodies. The article attributes the discrepancy to the belief that one body was removed from the crash site when a team of American agents came to Lockerbie and tampered with the evidence in an attempt to falsify the causes of the disaster. The coroner was later surprised to learn that the Scottish police had particulars of only 58 bodies.

The statements made by some officials and by the relatives of victims and others are alone sufficient to undermine the foundations on which the United States and British indictments are based, and this can only be ascertained by an impartial inquiry that brings the truth to light and leaves no room for doubt. We shall here cite a few examples of the many statements concerning those circumstances surrounding the Lockerbie incident that require clarification:

(a) Mr. Martin Cadman, the father of one of the victims, has said that "An aide to President George Bush told me, 'Both of our governments know who planted the bomb and how, but they will never admit it'".

(b) The British Minister of Transport stated at a London club in March 1989 that President Bush and Prime Minister Margaret Thatcher had decided in a telephone conversation to downgrade the criminal investigation into the Lockerbie affair. The journalist David Libarow confirmed this statement before suppressing it in the book he subsequently published.

(c) Mr. Phipps, former chief of the British Airways security department, has stated: "I found no evidence in the documents of the existence of any unaccompanied suitcase".

(d) Mr. Bollier, the supplier of the timers, said in 1990/1991: "I spent a whole week with the FBI agents and tried to get a look at the timer part. But they told me they didn't have it and that it was with the Scottish police." Then he spent another week with the Scottish police, who showed him only a picture. He added: "An American police officer said that there was an explanation for all this and that three of his assistants had stated on oath

that they had found the part and had signed an affidavit to that effect. However, I later heard that it was the Scottish police who had found the part in a shirt that had come from Malta."

The debate on the Lockerbie affair that took place in the House of Commons on 1 February 1995, the many questions asked and the answers given by Mr. Douglas Hurd, Secretary of State for Foreign and Commonwealth Affairs, aroused more suspicions than they removed with respect to the investigations carried out and thickened the fog surrounding the issue more than they dispelled it. In many of his replies, he seemed inconsistent. This view is not ours alone but is shared by others, as is indicated by the article that appeared in The Sunday Telegraph on 5 February 1995 under the headline "Hurd Speech Only Adds to Clamour for Inquiry". At one point it is said, concerning Mr. Hurd, "His half-hour speech certainly made a striking impression, but it included striking inconsistencies". There were many important questions to which Mr. Hurd did not respond, to the extent that the writer of the article was prompted to ask: "If a Foreign Secretary, one of the most powerful politicians in Britain, cannot answer questions about the conduct of an international inquiry, who can? Which adds to the mounting conviction of the victims' relatives and those wanting to learn the truth about Lockerbie that the sooner the Government sets up a public inquiry the better."

7. The Libyan Arab Jamahiriya is not in a position to present a list of all the flaws and shortcomings that have vitiated the inquiry and evidentiary proceedings. It is obliged to rely on revelations in the media because the three countries in question have thus far persistently refused to provide it with the evidence on which the Governments of the United States and the United Kingdom based themselves in making charges against the two suspects. Had they kept the Libyan authorities informed, those authorities would have been able to evaluate the evidence objectively and impartially.

In view of these developments, it is no longer possible to place any reliance on indictments that are vitiated by such serious defects and flaws. It is also no longer acceptable from a legal, political or humanitarian point of view for an entire people to continue to suffer because of a mere suspicion that two persons may be connected with the bombing of an aircraft based on investigations that are not yet complete. It has become essential to institute an inquiry that will bring the truth to light. This is no longer the demand of Libya alone but has become that of the victims' relatives and of all who wish to know the truth about the Lockerbie incident.

8. In connection with the demands of the French Government stemming from the bombing of the UTA aircraft (S/23306), France calls upon Libya:

> "To produce all the material evidence in its possession and to facilitate access to all documents that might be useful for establishing the truth;
>
> "To facilitate the necessary contacts and meetings, inter alia, for the assembly of witnesses;
>
> "To authorize the responsible Libyan officials to respond to any request made by the examining magistrate responsible for judicial information."

Seeing nothing in their ensemble that is incompatible with the law, the Libyan Arab Jamahiriya has accorded great attention to these demands. There have been intensive contacts and discussions between the judicial authorities in the Libyan Arab Jamahiriya and in France with a view to establishing responsibility for the bombing of UTA flight 772. The French and Libyan investigating magistrates have met on a number of occasions, the French magistrate has been shown the records of the investigation carried out by the Libyan magistrate and it has been agreed that the French magistrate should travel to Libya to complete his inquiries. Contacts between the two countries are being maintained in order to pursue and complete these endeavours. With a view to establishing ongoing and constructive cooperation between the two countries, on 22 November 1993 the Secretary of the General People's Committee for Foreign Liaison and International Cooperation proposed the following to the French Minister for Foreign Affairs (S/26804, annex, enclosure):

> "1. That an urgent meeting should be held between the Libyan investigating counsellor and the French examining magistrate in order to exchange views and establish procedures for the completion of the inquiries being carried out by both sides;
>
> "2. That a date should be fixed for the French examining magistrate to come to the Jamahiriya to complete his inquiries by, inter alia, hearing the statements of individuals and examining materials essential to the inquiry, in cooperation with the Libyan investigating counsellor and within the bounds of the laws and statutes in force;
>
> "3. That, should the inquiries result in demonstrating that it is essential for the two suspects to appear before the court, the Libyan authorities would have no objection to them doing so."

(See also documents S/23473, S/23672, S/23828, S/23891, S/23918, S/24961, S/26313 and S/26523 and S/32995.)

9. The three countries in question have deliberately linked their demand relating to terrorism with the Libyan Arab Jamahiriya, and they have induced the Security Council to confine this universal phenomenon to the Lockerbie and UTA incidents. Since the onset of the crisis, they have not ceased to reiterate that Libya must "commit itself concretely and definitively to cease all forms of terrorist action and all assistance to terrorist groups" and that it "must promptly, by concrete actions, prove its renunciation of terrorism" (S/23309).

In a letter dated 11 May 1992 addressed to the Secretary-General of the United Nations (S/23918), the Jamahiriya declared that it definitively condemned all forms of international terrorism of whatever origin and affirmed that there were no terrorist training camps or terrorist organizations or groups in its territory. This was no mere abstract declaration, and Libya followed it up with a practical proposal by inviting a committee from the Security Council, the United Nations Secretariat or any appropriate United Nations body to investigate this at any time. At the same time, Libya also stated that it would not in any way permit its territory or its institutions to be used directly or indirectly for the perpetration of terrorist acts and that it was prepared to impose the severest penalties on anyone proved to be involved in such acts.

The General People's Committee for Foreign Liaison and International Cooperation issued a statement (S/23917) confirming the undertakings given in that letter. Libya confirmed them once again in a letter dated 8 December 1992 addressed to the Secretary-General (S/24916) and, in a letter dated 28 July 1993, assured the Secretary-General that it was prepared to receive a mission of his choosing to verify that there were no camps in Libyan territory allegedly used for the training of terrorists. (See documents S/23417, S/23672 and S/24209.) The Libyan Arab Jamahiriya has also cooperated with the United Kingdom in a concrete manner in connection with its particular demands. (See documents S/23995 and S/26313.) However, these three countries choose to ignore all of the foregoing and reject the idea of sending a mission to verify that there are no camps and so forth, so that the question of terrorism remains a sword of Damocles and they have a justification to retain and strengthen the sanctions on the pretext that Libya is failing to comply with the resolutions of the Security Council.

10. Recent developments having shown that the foundation on which the Security Council based its resolution 731 (1992) is weak if not non-existent, the continued suffering of the Libyan Arab people as a result of the sanctions imposed by the Council under strong pressure from these three countries no longer has any justification. The other members of the Council must assume their legal, political and humanitarian responsibilities, and they must:

1. Urge the institution of an impartial inquiry into the true state of affairs with respect to the bombing of the Pan Am aircraft over Lockerbie in view of the fact that the investigations conducted in the past have been vitiated by flaws and beset with suspicion;

2. Suspend the application of the sanctions imposed by the Security Council under its resolutions 748 (1992) and 883 (1993) pending the outcome of the inquiry.

11. The Libyan Arab Jamahiriya would like to dispel any suspicion that may arise that its request for a new inquiry and for the suspension of sanctions conceals an attempt to extricate itself from the crisis. It continues to view the proposal of the Secretary-General of the League of Arab States that the two suspects should be tried by Scottish judges under Scots law at the seat of the International Court of Justice at The Hague as a compromise solution that takes account of the interests of all the parties concerned, and it joins the Council of the League of Arab States in urging the Security Council to take account of this new and constructive proposal.

The legal impediments to this proposal that were raised in the House of Commons on 1 February 1995 by Mr. Douglas Hurd, British Secretary of State for Foreign and Commonwealth Affairs, and the doubts he cast on guarantees for the appearance of the two suspects before the court in the event such legal impediments were overcome represent no more than an attempt to erect obstacles to a resolution of the crisis. The Jamahiriya has, after all, on more than one occasion given assurances of the seriousness of its intention to conduct an impartial trial for the two suspects. If the Secretary of State for Foreign and Commonwealth Affairs feels that there is a legal obstacle to holding the trial at The Hague, then he should grasp the legal difficulties encountered by a

country that is requested to extradite its nationals to another country without any legal justification. Over and above the assurances given by the Libyan Arab Jamahiriya, it is prepared to discuss additional guarantees in the event that the Government of the United Kingdom should show good faith and accept the proposal of the Secretary-General of the League of Arab States.